

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

WILLIAM SPENCER,

Plaintiff,

Case No. 03-40043

vs.

HONORABLE PAUL V. GADOLA  
HONORABLE STEVEN D. PEPE

MICHAEL BOUCHARD, THOMAS  
QUISENBERRY, CAPTAIN WALLACE, and  
LT. SNAREY,

Defendants.

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**ORDER STRIKING FROM THE RECORD PLAINTIFF'S MOTION FOR JOINDER (DKT. #130)**  
**AND AWARDING SANCTIONS**

**I. BACKGROUND**

This is a prisoner civil rights action brought pursuant to 42 U.S.C. §1983. Plaintiff William Spencer alleges that Defendants violated his First, Fourth, Eighth and Fourteenth Amendment rights. On October 28, 2004, Defendants filed a motion to dismiss, or in the alternative, for summary judgment, which this Court granted on September 14, 2005. The United States Court of Appeals for the Sixth Circuit, finding that Plaintiff had not exhausted his administrative remedies according to the requirements of the Prison Litigation Reform Act (PLRA) with respect to the First Amendment claims against Defendants Snarey, Wallace, and Bouchard; Plaintiff's Eighth Amendment claims against Bouchard; and all claims against Defendant Quisenberry, vacated this Court's grant of summary judgment on those claims, and instructed this Court to dismiss those claims without prejudice. The Court of Appeals also reversed this Court's grant of summary judgment as to Plaintiff's Eighth Amendment warm and dry housing claim against Defendants Snarey and Wallace, finding that Plaintiff had presented sufficient evidence to create a genuine issue

of material fact on that claim. The Court of Appeals then remanded this case for further proceedings. *See Spencer v. Bouchard et al.*, 449 F.3d 721 (6th Cir. 2006).

In the present “motion”, Plaintiff seeks to “join” previously dismissed defendant Michael J. Bouchard and add a new defendant, Oakland County Corporation (Dkt. #130). All pretrial proceedings have been referred pursuant to 28 U.S.C. § 636(b)(1)(A),(B).

## **II. ANALYSIS**

Other than the directives to dismiss certain unexhausted claims without prejudice, his case was remanded to this court for further consideration of the merits only with respect to Plaintiff’s Eighth Amendment warm and dry shelter claim against Defendants Snarey and Wallace (Dkt. #121). This is the second time Plaintiff has submitted this motion for joinder of allegedly necessary parties to this Court. Plaintiff originally submitted this motion on September 29, 2006 (Dkt. #126). Judge Paul V. Gadola struck Plaintiff’s motion from the record because it did not conform to the Eastern District of Michigan Local Rules (Dkt. #127). The Order stated that “future filings by Plaintiff must conform with all applicable local rules and shall contain printed matter on only one-side of each page.” Plaintiff’s current “motion” includes a single spaced, two-sided affidavit which is not in conformance with the Court’s Order.

Further, Plaintiff’s unauthorized filing of this “motion” is in violation of the Protective Order issued in this case on February 13, 2004 (Docket No. 70). The terms of the Protective Order state: “With the exception to objections under Fed.R.Civ.P. 72 (a) and Local Rule 72.1(d) to any of the undersigned’s orders, IT IS ORDERED THAT Plaintiff shall submit all other pleadings, motions, discovery requests, and correspondence to the chambers of Magistrate Judge Steven Pepe before they are filed or served on defense counsel, in order to assure that they are not frivolous submissions

and that they otherwise comply with the Court's rules." As noticed by the Protective Order, "any failure by Plaintiff to follow this order may result in the submission(s) being stricken from the case record and sanctions imposed upon Plaintiff, including the possible sanction of dismissal of his pending or any future claims with prejudice."

Because this court has twice before denied as futile Plaintiff's request to amend his complaint to add claims against Oakland County (Dkt. #64 & #65), the present motion to join Oakland County is deemed frivolous.

The motion for leave to join Oakland County Sheriff Michael J. Bouchard is also groundless. Following the Sixth Circuit remand instructions, Plaintiff's Eighth Amendment claim against Sheriff Bouchard has been dismissed without prejudice on August 14, 2006 (Dkt. #121), due to Plaintiff's failure to exhaust his administrative remedies with respect to this claim. Plaintiff's September 29, 2006, motion for the entry of a "stipulated" order acknowledging exhaustion was denied by this Court on December 5, 2006 (Dkt. #129). Yet Plaintiff's current motion to join Sheriff Bouchard apparently relies upon the validity of this order. Despite his allegation to the contrary, Plaintiff has failed to show that he has exhausted his administrative remedies with respect to this claim. Further, if proof of exhaustion does exist, the proper motion would be one to amend the complaint and, in concurrence with the Local Rule 15.1 of this Court, provide a proposed amended complaint for review, which, pursuant to the PLRA, would require PLRA compliant proof of exhaustion.<sup>1</sup>

Accordingly, Plaintiff's motion for joinder is stricken from the record. Further, upon the

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<sup>1</sup> This is not to say that such a motion would be successful, as it remains to be seen whether this allegation could withstand arguments for timeliness, prejudice and/or futility. It is further unclear at the present time whether total exhaustion is required in this Circuit and, if so, whether Plaintiff would be allowed to amend his complaint given that he did not allege exhaustion of this claim in the original complaint.

conclusion of this case, Defendants Snarey and Wallace may seek reasonable costs and attorney fees incurred in defending against this motion. Such costs shall be (a.) assessed against Plaintiff in accordance with 28 U.S.C. §1915(f)(2)(A) and/or (b) levied against any damages Plaintiff is awarded.

Parties may file objections to this order within ten days of service of this order pursuant to Fed. R. Civ. P. 72(a) and Local Rule 72.1(d).

**SO ORDERED.**

Dated: January 12, 2007  
Ann Arbor, Michigan

s/Steven D. Pepe  
United States Magistrate Judge

Certificate of Service

I hereby certify that on January 12, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Keith J. Lermينياux, and I further certify that I mailed by United States Postal Service the paper to the following non-ECF participant: William Spencer, #384851, Bellamy Creek Correctional Facility, 1727 W. Bluewater Hwy., Ionia, MI 48816.

s/ James P. Peltier  
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